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Attorneys for Defendants K-M Industries Holding Co. Inc.; K-M Industries Holding Co. Inc. ESOP Plan Committee; and CIG ESOP Plan Committee

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

THOMAS FERNANDEZ and LORA
SMITH, individually and on behalf of a class
of all others similarly situated.

Case No. C06-07339 MJJ

**REVISED [PROPOSED] STIPULATED
PROTECTIVE ORDER**

Plaintiffs.

vs.

K-M INDUSTRIES HOLDING CO., INC.;
K-M INDUSTRIES HOLDING CO. INC.
ESOP PLAN COMMITTEE; WILLIAM E.
AND DESIREE B. MOORE REVOCABLE
TRUST; ADMINISTRATOR OF THE
ESTATE OF WILLIAM E. MOORE,
DECEASED; CIG ESOP PLAN
COMMITTEE; and NORTH STAR TRUST
COMPANY,

Defendants.

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted.

Accordingly, the parties hereby stipulate to and petition the court to enter the following revised Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket

1 protections on all disclosures or responses to discovery and that the protection it affords extends
 2 only to the limited information or items that are entitled under the applicable legal principles to
 3 treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, this
 4 Stipulated Protective Order creates no entitlement to file confidential information under seal;
 5 Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards
 6 that will be applied when a party seeks permission from the court to file material under seal.

7 2. **DEFINITIONS**

8 2.1 **Party**: any party to this action, including all of its officers, directors, employees,
 9 consultants, retained experts, and outside counsel (and their support staff).

10 2.2 **Disclosure or Discovery Material**: all items or information, regardless of the
 11 medium or manner generated, stored, or maintained (including, among other things, testimony,
 12 transcripts, or tangible things) that are produced or generated in disclosures or responses to
 13 discovery in this matter.

14 2.3 **“CONFIDENTIAL” Information or Items**: information (regardless of how
 15 generated, stored or maintained) or tangible things that qualify for protection under standards
 16 developed under F.R. Civ. P. 26(c).

17 2.4 **“HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” Information or**
 18 **Items**: extremely sensitive “CONFIDENTIAL” Information or Items whose disclosure to another
 19 Party or nonparty would create a substantial risk of serious injury that could not be avoided by
 20 less restrictive means.

21 2.5 **Receiving Party**: a Party that receives Disclosure or Discovery Material from a
 22 Producing Party.

23 2.6 **Producing Party**: a Party or non-party that produces Disclosure or Discovery
 24 Material in this action.

25 2.7 **Designating Party**: a Party or non-party that designates information or items that it
 26 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
 27 CONFIDENTIAL — ATTORNEYS’ EYES ONLY.”

28

1 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
 2 “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY.”

3 2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained
 4 to represent or advise a Party in this action.

5 2.10 House Counsel: attorneys who are employees of a Party.

6 2.11 Counsel: (without qualifier): Outside Counsel and House Counsel (as well as their
 7 support staffs).

8 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to
 9 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
 10 consultant in this action and who is not a past or a current employee of a Party or of a competitor
 11 of a Party’s and who, at the time of retention, is not anticipated to become an employee of a Party
 12 or a competitor of a Party’s. This definition includes a professional jury or trial consultant
 13 retained in connection with this litigation.

14 2.13 Professional Vendors: persons or entities that provide litigation support services
 15 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
 16 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

17 3. SCOPE

18 The protections conferred by this Stipulation and Order cover not only Protected Material
 19 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
 20 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
 21 parties or counsel to or in court or in other settings that reveal Protected Material.

22 4. DURATION

23 The Court shall maintain its jurisdiction to enforce the terms of this Stipulated Protective
 24 Order for six months after final termination of the action. Nevertheless, even after the
 25 termination of this litigation, the confidentiality obligations imposed by this Order shall remain in
 26 effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

27 5. DESIGNATING PROTECTED MATERIAL

28 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party

1 or non-party that designates information or items for protection under this Order must take care to
 2 limit any such designation to specific material that qualifies under the appropriate standards. A
 3 Designating Party must take care to designate for protection only those parts of material,
 4 documents, items, or oral or written communications that qualify – so that other portions of the
 5 material, documents, items, or communications for which protection is not warranted are not
 6 swept unjustifiably within the ambit of this Order. Specifically, a Designating Party must
 7 determine that the information sought to be protected is properly subject to protection under
 8 F.R.C.P. Rule 26(c). Counsel for a Designating Party shall make a good faith determination that
 9 protection is warranted before designating any discovery material “CONFIDENTIAL” or
 10 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

11 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 12 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
 13 unnecessarily encumber or retard the case development process, or to impose unnecessary
 14 expenses and burdens on other parties), expose the Designating Party to sanctions under the
 15 existing legal standards for impositions of sanctions.

16 If it comes to a Party’s or a non-party’s attention that information or items that it
 17 designated for protection do not qualify for protection at all, or do not qualify for the level of
 18 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
 19 withdrawing the mistaken designation.

20 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
 21 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
 22 material that qualifies for protection under this Order must be clearly so designated before the
 23 material is disclosed or produced.

24 5.3 Designation in conformity with this Order requires:

25 (a) for information in documentary form (apart from transcripts of depositions
 26 or other pretrial or trial proceedings), that the Producing Party affix the legend
 27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” clearly on
 28 each page that contains protected material. Only those pages that contain “CONFIDENTIAL” or

1 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" shall be marked as such.

2 A Party or non-party that makes original documents or materials available for inspection
 3 need not designate them for protection until after the inspecting Party has indicated which
 4 material it would like copied and produced. During the inspection and before the designation, all
 5 of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL -
 6 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
 7 copied and produced, the Producing Party must determine which documents, or portions thereof,
 8 qualify for protection under this Order, then, before producing the specified documents, the
 9 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
 10 CONFIDENTIAL – ATTORNEYS' EYES ONLY") clearly on each page that contains Protected
 11 Material.

12 (b) for testimony given in deposition or in other pretrial or trial proceedings,
 13 that the Party or non-party offering or sponsoring the testimony identify on the record, before the
 14 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify
 15 any portions of the testimony that qualify as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL
 16 – ATTORNEYS' EYES ONLY." When it is impractical to identify separately each portion of
 17 testimony that is entitled to protection, and when it appears that substantial portions of the
 18 testimony may qualify for protection, the Party or nonparty that sponsors, offers, or gives the
 19 testimony may invoke on the record (before the deposition or proceeding is concluded) a right to
 20 have up to 30 days to identify the specific portions of the testimony as to which protection is
 21 sought and to specify the level of protection being asserted ("CONFIDENTIAL" or "HIGHLY
 22 CONFIDENTIAL — ATTORNEYS' EYES ONLY"). Only those portions of the testimony that
 23 are appropriately designated for protection within the 30 days shall be covered by the provisions
 24 of this Stipulated Protective Order.

25 Transcript pages containing Protected Material must be separately marked by the court
 26 reporter, who must affix to the top of each such page the legend "CONFIDENTIAL" or
 27 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," as instructed by the Party or
 28 nonparty offering or sponsoring the witness or presenting the testimony.

7 5.4 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
8 designate qualified information or items as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
9 — ATTORNEYS’ EYES ONLY” does not, standing alone, waive the Designating Party’s right
10 to secure protection under this Order for such material. If material is appropriately designated as
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” after the
12 material was initially produced, the Receiving Party, on timely notification of the designation,
13 must make reasonable efforts to assure that the material is treated in accordance with the
14 provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
17 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
18 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
19 waive its right to challenge a confidentiality designation by electing not to mount a challenge
20 promptly after the original designation is disclosed.

21 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
22 Party's confidentiality designation must do so in good faith and must begin the process by
23 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)
24 with counsel for the Designating Party. In conferring, the challenging Party must explain the basis
25 for its belief that the confidentiality designation was not proper and must give the Designating
26 Party an opportunity to review the designated material, to reconsider the circumstances, and, if no
27 change in designation is offered, to explain the basis for the chosen designation. A challenging
28 Party may proceed to the next stage of the challenge process only if it has engaged in this meet

1 and confer process first.

2 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
 3 designation after considering the justification offered by the Designating Party may file and serve
 4 a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
 5 that identifies the challenged material and sets forth in detail the basis for the challenge. Each
 6 such motion must be accompanied by a competent declaration that affirms that the movant has
 7 complied with the meet and confer requirements imposed in the preceding paragraph and that sets
 8 forth with specificity the justification for the confidentiality designation that was given by the
 9 Designating Party in the meet and confer dialogue. The burden of persuasion in any such
 10 challenge proceeding shall be on the Designating Party. Until the court rules on the challenge, all
 11 parties shall continue to afford the material in question the level of protection to which it is
 12 entitled under the Producing Party's designation.

13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

14 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 15 produced by another Party or by a non-party in connection with this case only for prosecuting,
 16 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
 17 to the categories of persons and under the conditions described in this Order. When the litigation
 18 has been terminated, a Receiving Party must comply with the provisions of Section 11, below
 19 (FINAL DISPOSITION). Protected Material must be stored and maintained by a Receiving Party
 20 at a location and in a secure manner that ensures that access is limited to the persons authorized
 21 under this Order.

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
 23 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
 24 disclose any information or item designated "CONFIDENTIAL" only to:

25 (a) the Receiving Party's Outside Counsel of record in this action, as well as
 26 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
 27 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached
 28 hereto as Exhibit A;

1 (b) the Receiving Party, including the officers, directors, and employees
 2 (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
 3 this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit
 4 A);

5 (c) a person who is a putative class member or class member who has signed
 6 the "Agreement to Be Bound by Protective Order" (Exhibit A);

7 (d) experts (as defined in this Order) of the Receiving Party to whom
 8 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
 9 Bound by Protective Order" (Exhibit A);

10 (e) the Court and its personnel;

11 (f) court reporters, their staffs, and professional vendors to whom disclosure is
 12 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
 13 Protective Order" (Exhibit A);

14 (g) during their depositions, witnesses in the action to whom disclosure is
 15 reasonably necessary and who (with the exception of witnesses employed by parties) have signed
 16 the "Agreement to Be Bound by Protective Order" (Exhibit A). Any witness who does not sign
 17 the "Agreement to Be Bound by Protective Order" (Exhibit A) shall be required to review any
 18 pages or exhibits marked as "CONFIDENTIAL" under the terms of this Stipulated Protective
 19 Order in the offices of the appropriate court reporter or in the offices of the disclosing party and
 20 such witness shall not be entitled to copies of pages or exhibits marked as "CONFIDENTIAL"
 21 under the terms of this Stipulated Protective Order. Pages of transcribed deposition testimony or
 22 exhibits to depositions that reveal Protected Material must be separately marked as such by the
 23 court reporter and may not be disclosed to anyone except as permitted under this Stipulated
 24 Protective Order;

25 (h) in preparation for their depositions, witnesses in the action to whom
 26 disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by
 27 Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to
 28 depositions that reveal Protected Material must be separately marked as such by the court reporter

1 and may not be disclosed to anyone except as permitted under this Stipulated Protective Order;
 2 and

3 (i) the author of the document or the original source of the information.

4 Notwithstanding the above paragraph, a Receiving Party may disclose to any putative
 5 class member or class member the personnel file and payroll information that pertains to any such
 6 individual, regardless of whether the information or item is designated as "CONFIDENTIAL" or
 7 "HIGHLY CONFIDENTIAL — ATTORNEYS EYES ONLY."

8 **7.3 Disclosure of "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY"**

9 **Information or Items.** Unless otherwise ordered by the court or permitted in writing by the
 10 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
 11 CONFIDENTIAL — ATTORNEYS' EYES ONLY" only to:

12 (a) the Receiving Party's Outside Counsel of record in this action, as well as
 13 employees of said Outside Counsel to whom it is reasonably necessary to disclose the information
 14 for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is
 15 attached hereto as Exhibit A;

16 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably
 17 necessary for this litigation, and (2) who have signed the "Agreement to Be Bound by Protective
 18 Order" (Exhibit A);

19 (c) the Court and its personnel;

20 (d) court reporters, their staffs, and professional vendors to whom disclosure is
 21 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
 22 Protective Order" (Exhibit A);

23 (e) during their depositions, witnesses in the action to whom disclosure is
 24 reasonably necessary and who (with the exception of witnesses employed by parties) have signed
 25 the "Agreement to Be Bound by Protective Order" (Exhibit A). Any witness who does not sign
 26 the "Agreement to Be Bound by Protective Order" (Exhibit A) shall be required to review any
 27 pages or exhibits marked as "HIGHLY CONFIDENTIAL — ATTORNEYS EYES ONLY"
 28 under the terms of this Stipulated Protective Order in the offices of the appropriate court reporter

1 or in the offices of the disclosing party and such witness shall not be entitled to copies of pages or
 2 exhibits marked as "HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY" under the terms
 3 of this Stipulated Protective Order. Pages of transcribed deposition testimony or exhibits to
 4 depositions that reveal Protected Material must be separately marked as such by the court reporter
 5 and may not be disclosed to anyone except as permitted under this Stipulated Protective Order;

6 (f) in preparation for their depositions, witnesses in the action to whom
 7 disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by
 8 Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to
 9 depositions that reveal Protected Material must be separately marked as such by the court reporter
 10 and may not be disclosed to anyone except as permitted under this Stipulated Protective Order;
 11 and

12 (g) the author of the document or the original source of the information.

13 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 14 LITIGATION.

15 If a Receiving Party is served with a subpoena or an order issued in other litigation that
 16 would compel disclosure of any information or items designated in this action as
 17 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL — ATTORNEYS' EYES ONLY," the
 18 Receiving Party must so notify the Designating Party, in writing (by fax or electronic mail, if
 19 possible) immediately and in no event more than three court days after receiving the subpoena or
 20 order. Such notification must include a copy of the subpoena or court order.

21 The Receiving Party also must immediately inform in writing the Party who caused the
 22 subpoena or order to issue in the other litigation that some or all the material covered by the
 23 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
 24 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
 25 caused the subpoena or order to issue.

26 The purpose of imposing these duties is to alert the interested parties to the existence of
 27 this Protective Order and to afford the Designating Party in this case an opportunity to try to
 28 protect its confidentiality interests in the court from which the subpoena or order issued. The

1 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
 2 confidential material — and nothing in these provisions should be construed as authorizing or
 3 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

4 9. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 6 Material to any person or in any circumstance not authorized under this Stipulated Protective
 7 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
 8 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
 9 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
 10 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
 11 Be Bound” that is attached hereto as Exhibit A.

12 10. **FILING PROTECTED MATERIAL.**

13 Without written permission from the Designating Party or a court order secured after
 14 appropriate notice to all interested persons, a Party may not file in the public record in this action
 15 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
 16 with Civil Local Rule 79-5. In addition to placing documents in a sealed envelope with
 17 instructions that the document is filed pursuant to the Stipulated Protective Order and that the
 18 envelope is not to be opened absent further order of the court, the filing Party will label the
 19 envelope to identify the title of the case, the case number, and the title of the document.

20 11. **FINAL DISPOSITION.**

21 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days
 22 after the final termination of this action, each Receiving Party must destroy or return to the
 23 Producing Party all Protected Material to the Producing Party. As used in this subdivision, “all
 24 Protected Material” includes all copies, abstracts, compilations, summaries or any other form of
 25 reproducing or capturing any of the Protected Material. With permission in writing from the
 26 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead
 27 of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must
 28 submit a written certification to the Producing Party (and, if not the same person or entity, to the

1 Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all
 2 the Protected Material that was returned or destroyed and that affirms that the Receiving Party has
 3 not, other than as authorized below in the subsequent paragraph, retained any copies, abstracts,
 4 compilations, summaries or other forms of reproducing or capturing any of the Protected
 5 Material.

6 Notwithstanding the provisions in the immediately preceding paragraph, Counsel are
 7 entitled to retain an archival copy of all documents and things produced in discovery, pleadings,
 8 motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if
 9 such materials contain Protected Material. Any such archival copies that contain or constitute
 10 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION),
 11 above.

12. **MISCELLANEOUS**

13. 12.1 **Right to Further Relief.** Nothing in this Order abridges the right of any person to
 14 seek its modification by the Court in the future.

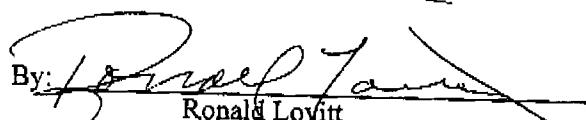
15. 12.2 **Right to Assert Other Objections.** By stipulating to the entry of this Protective
 16 Order, no Party waives any right it otherwise would have to object to disclosing or producing any
 17 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
 18 Party waives any right to object on any ground to use in evidence of any of the material covered
 19 by this Protective Order.

20. **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

21. DATED: March 9, 2007

LOVITT & HANNAN, INC.

23. By:

24. 
 25. Ronald Lovitt
 26. Attorneys for Defendants K-M Industries Holding
 27. Co., Inc.; K-M Industries Holding Co., Inc. ESOP
 28. Plan Committee; and CIG ESOP Plan Committee

1 DATED: March ___, 2007

HENNIGAN, BENNETT & DORMAN LLP

2
3 By: Robert L. Palmer /dtd
4 Robert L. Palmer
5 Attorneys for Defendant William E. And Desiree B.
Moore Revocable Trust

6 DATED: March ___, 2007

MORGAN, LEWIS & BOCKIUS LLP

7
8 DATED: March ___, 2007

9 By: _____
10 Nicole Diller
Attorneys for Defendant North Star Trust Company

11
12 LEWIS, FEINBERG, LEE, RENAKER &
13 JACKSON, P.C.

14
15 By: _____
16 Todd Jackson
17 Attorneys for Plaintiffs Thomas Fernandez and
18 Lora Smith

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ORDER

IT IS SO ORDERED.

DATED: _____

The Honorable Martin J. Jenkins
United States District Judge

1 DATED: March __, 2007

HENNIGAN, BENNETT & DORMAN LLP

2

3 DATED: March 1, 2007

4 By: _____ Robert L. Palmer
5 Attorneys for Defendant William E. And Desiree B.
6 Moore Revocable Trust

7 MORGAN, LEWIS & BOCKIUS LLP

8

9 DATED: March __, 2007

10 By: 
11 Nicole Diller
12 Attorneys for Defendant North Star Trust Company

13 LEWIS, FEINBERG, LEE, RENAKER &
14 JACKSON, P.C.

15 IT IS SO ORDERED.

16

17 DATED: March 16, 2007

18 

19 The Honorable Martin J. Jenkins
20 United States District Judge

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LEWIS FEINBERG

PAGE 02/02

1 DATED: March ___, 2007

HENNIGAN, BENNETT & DORMAN LLP

2

3

By: _____

Robert L. Palmer

Attorneys for Defendant William E. And Desiree B.
Moore Revocable Trust

4

5 DATED: March ___, 2007

MORGAN, LEWIS & BOCKIUS LLP

6

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By: _____

Nicole Diller

Attorneys for Defendant North Star Trust Company

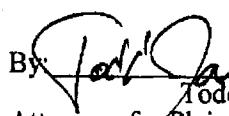
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9 DATED: March 9, 2007LEWIS, FEINBERG, LEE, RENAKER &
JACKSON, P.C.

10

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By: _____

Todd JacksonAttorneys for Plaintiffs Thomas Fernandez and
Lora Smith

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ORDER

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IT IS SO ORDERED.

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DATED: _____

The Honorable Martin J. Jenkins
United States District Judge

1 EXHIBIT A
23 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**
4

I, _____ [print or type full name], of _____ [print or type full address] declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *Fernandez, et al., v. K-M Industries Holding Co., Inc., et al.*, Case No. C06-07339 MJJ. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and agree that the material covered by this Stipulated Protective Order shall be used exclusively for the purposes of this litigation and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone numbers] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____